

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,596

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a thirty-six-year-old woman who has a sixth grade education. She has worked most of her life as a farmhand with brief stints as a nurse's aide and as a laundry worker in a dry cleaning establishment. All of her work involved relatively heavy labor, including constant standing and walking and the lifting of from fifty to one hundred pounds on a regular basis.
2. The petitioner injured her right knee in an accident in 1986. She experienced torn ligaments and internal derangement which were partially corrected by surgery at that time. She never completely recovered her function and, in September of 1991, she was limited to sedentary duty by her physicians. In June of 1992, the petitioner underwent further reconstructive surgery. In September of 1992, the petitioner was released for work with limitations on lifting more than fifty pounds or pushing and pulling heavy objects.
3. By February of 1993, the petitioner needed and had more surgery. All of the surgeries were paid for by Medicaid as the petitioner was then eligible, apparently from her presence in an ANFC related household. That eligibility ended in March of 1993, when the dependent child left with the petitioner's ex-husband. In the summer of 1993, the petitioner found a job in a stitching factory which required her to sit all day and operate some foot controls. The operation of the foot controls reinjured her knee causing her swelling and pain which was treated through aspiration of the fluids, the administration of steroids, and the use of a knee brace. The petitioner was forced to leave that job after about a month.
4. Since that time, the petitioner's condition has further deteriorated. Because of her knee injury, she has developed osteoarthritis which, despite treatment, causes her constant considerable pain. In a letter dated

October

18, 1993, the petitioner's treating orthopaedic surgeon stated:

[Petitioner] suffers from a ligament deficiency in her right knee, as well as early degenerative arthritis of her right knee. Of the two problems, although one aggravates the other, the arthritis is by far the worst problem for her at this time. Her pain has reached the point where it is no longer controlled with any sort of nonoperative treatment. That includes splinting, intra-articular Cortisone injections, anti-inflammatory medications and use of a cane. I feel that this patient will actually need two operations. Number one, I think she would require an osteotomy of her knee to control the arthritis and secondly, she would require a reconstruction of her ligaments once the osteotomy of the tibia has healed. The reason they cannot both be done at the same time is that the ligament reconstruction has to be done through the area of the osteotomy and could potentially cause problems with healing of the first operation.

At the present time she is disabled from working and she is in considerable chronic discomfort. She has limited ambulatory abilities. I think that a delay in providing treatment is contrary to the well being of this patient. So far, she has delayed having the surgery for several years because she has been unable to pay for the operation. At this point her discomfort and disability in terms of ambulation has reached the point where she is disabled and I think treatment should be performed on a fairly emergent basis. If this condition is not addressed on a fairly emergent basis she definitely will have deterioration of her knee to the point where a total knee replacement (TKA) will be needed. A TKA in a young individual is certainly not desirable because of the early failure rate of the total knee components in young individuals. It would be much more desirable to obtain relief of her pain without using a prosthesis.

As the information in this report is consistent with the bulk of the other evidence in the medical record and is not contradicted by any substantial evidence to the contrary, it is accepted as an accurate and reliable description of the petitioner's condition since at least October of 1993.

5. The petitioner is currently (May 1994) experiencing sharp pain on a constant basis from her knee to her hip and ankle despite large doses of Motrin taken eight to nine times per day. She has difficulty sleeping because of pain and that, combined with the effects of the medication, makes her feel very tired most of the time. There is no reason to expect that this condition will improve short of the two surgeries recommended by her orthopaedist.

6. In addition, the petitioner has suffered from migraine headaches for several years. Beginning in June of 1993, the petitioner experienced a sharp increase in the frequency of her headaches which cause both her head and neck to become stiff and sore. She has gone from an occasional headache to experiencing them several times per week. Speculation in the medical records is that her knee pain and other problems has increased the level of stress and tension in her life which has led to an increase in the headaches. She has minor migraines two to three times per week which debilitate her for 2 to 3 hours at a time. She also has major attacks two to three times per month which last for several days and are accompanied by perspiration and nausea. She has been changed to a new medication which

gives her greater relief but does not completely eliminate the headaches.

7. Finally, the petitioner currently carries a diagnosis for depression. She began seeing a counselor in late 1992 and early 1993 when her last marriage broke up. However, she discontinued the counseling

because she could not pay for it. Her physician prescribed anti-depressants for her which she has been on for about a year. A consulting psychologist described the petitioner in a February 1994 report as possibly suffering from dysthymia (long-term, low-grade depression) and significantly decreased memory functioning which may be a result of the dysthymia and intelligence in the low average range.

8. Based on the above, it is concluded that, for at least a year, the petitioner has or will suffer a loss of knee function and memory function as well as debilitating pain and fatigue due to a combination of impairments which totally prevent her from returning to her former employment or engaging in any other substantial gainful activity.

### ORDER

The decision of the Department is reversed.

### REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner has a combination of impairments as shown in the evidence above which has a severe enough impact not only to keep her from her former work (as the Department concedes) but also to prevent her from performing any other work available in the economy on a substantial and gainful basis. Therefore, it must be concluded that the petitioner's impairments are equally as severe as those in the Social Security listings and as such she must be found to be disabled. 20 C.F.R. § 416.920 (d).

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